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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,728	11/17/2003	Kyle A. Ryan	STOP-1-1002	4662

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT PAPER NUMBER

3727

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,728

Applicant(s)

RYAN ET AL

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/24/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (U.S. 5,050,758) in view of Moran (U.S. 6,745,505). Freeman et al. discloses the claimed method except for the seal being fully separated from the lid and except for the step of selecting the seal from a plurality. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Freeman et al. without the hinge, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

Moran teaches that it is known to select a seal from a plurality in order to distinguish bottles from each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Freeman et al. with the user selecting a seal from a plurality as taught by Moran in order to distinguish the beverage containers.

Regarding claims 3-7, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified method of Freeman et al. with the indicia as taught by Moran, in order to distinguish the beverage containers.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the seal of Freeman et al. with a substantially triangular shape,

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since applicant has not disclosed that having a triangular shape solves any stated problem or is for any particular purpose, and it appears that a substantially rectangular shape of Freeman et al. would perform equally well as the substantially triangular shape of applicant's invention.

3. Claims 1-14 rejected under 35 U.S.C. 102(b) as being anticipated by Reidinger et al. (U.S. 6,311,860) in view of DeMars (U.S. 4,899,902). Reidinger et al. discloses the claimed invention except for the spout. DeMars teaches that it is known to provide a spout on a lid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Reidinger et al. with a spout instead of a flap opening, as taught by DeMars, in order to allow the user to drink from the container without a straw.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the seal of Reidinger et al. with a substantially triangular shape, since applicant has not disclosed that having a triangular shape solves any stated problem or is for any particular purpose, and it appears that a substantially rectangular shape of Reidinger et al. would perform equally well as the substantially triangular shape of applicant's invention.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the secondary closure or indicia.

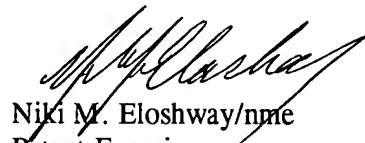
5. THIS ACTION IS NON-FINAL.

6. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (571) 272-4538. The examiner is in the office on Thursdays and Fridays.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Niki M. Eloshway/nme
Patent Examiner
May 26, 2005